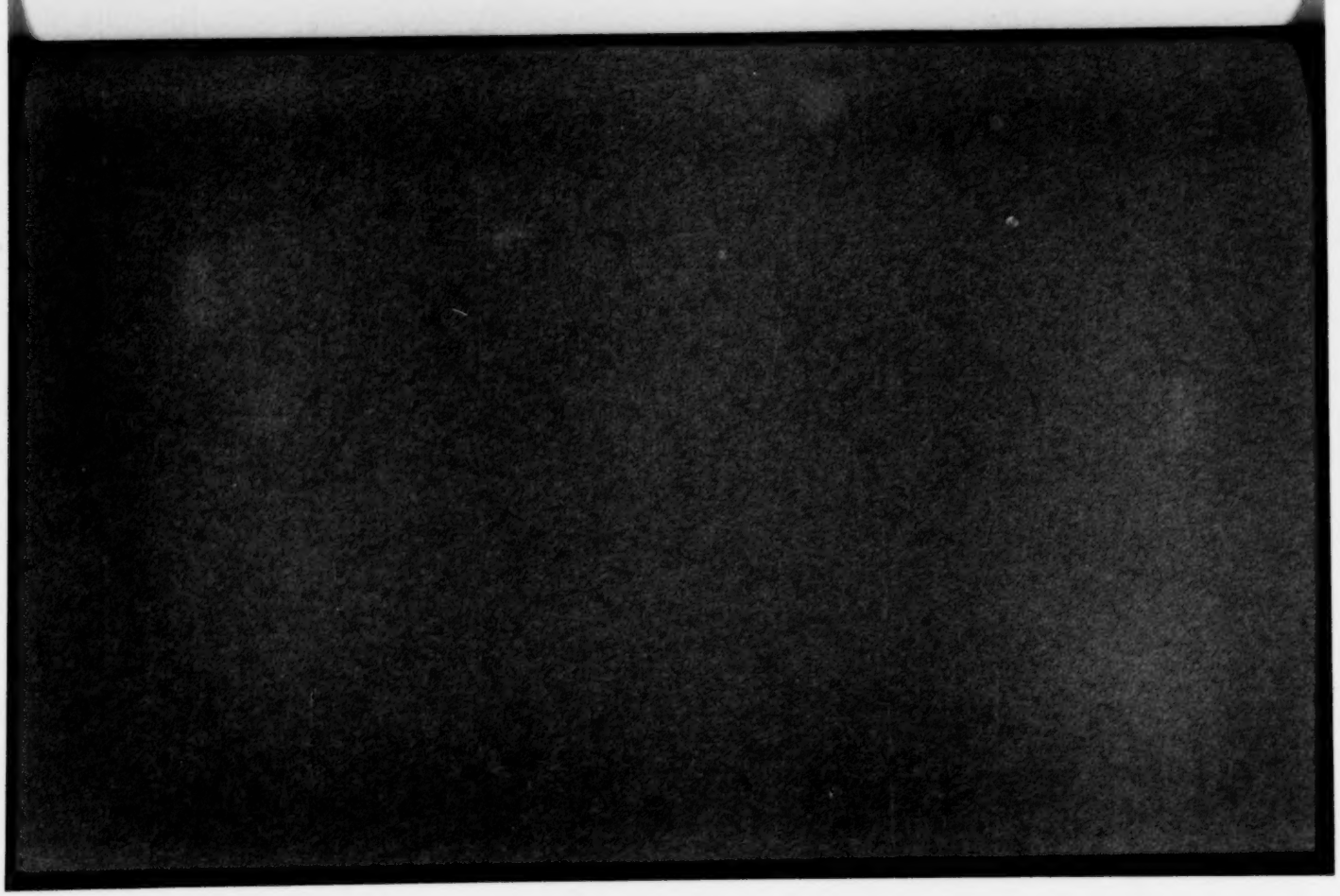

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RULES OF SUPREME COURT

Supreme Court of the United States

OCTOBER TERM, 1945

No. 338

FRANK A. BERRY and MILLER WALTON,
Petitioners,

vs.

C. J. ROOT, FIDUCIARY COUNSEL, INC., AUGUSTUS T. ASHTON, E. B. CONNOLLY, PARKER MAXWELL, and The Unknown Holders of $42,000 Par Value of Bonds Sought to be Affected by the So-called Plan of Composition,
Respondents.

BRIEF FOR RESPONDENT C. J. ROOT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit is reported in 148 Fed. 2d. at page 945. It is printed at R. 11174, pages 63 to 68.

No opinion was rendered by the District Court. The two orders of the District Court of which the petitioners seek review are printed at R. 11174, pages 49 to 51.

Grounds of Jurisdiction

Petitioners seek to invoke the jurisdiction of this Court under Section 240 (a) of the Judicial Code [U. S. C. A., Tit. 28, Sec. 347 (a)].

Statement of the Case

Petitioners have set forth, at pages 1 to 7 of their petition, what they call a statement of the case, but the facts are so obscured by argument and characterization that this respondent deems it best to restate the case as set forth below.

In 1940 the City of Coral Gables, Florida, instituted, in the United States District Court for the Southern District of Florida, proceedings for a composition of indebtedness under Chapter IX of the Bankruptcy Law (R. 10605, p. 1). Among the creditors whose claims were sought to be affected by the proceeding were Ed C. Wright, who was represented by the petitioner Miller Walton (R. 10605, p. 303), The American National Bank of Nashville, which was represented by the petitioner Frank A. Berry (R. 10605, p. 157), and also the various parties who are now the respondents in this application for certiorari. Certain of these respondents, including the respondent C. J. Root, were separately represented throughout the proceedings in the lower Court by counsel of their own respective choosing (R. 10605, pp. 336, 377), who were notably active and diligent, each in behalf of his own client, in opposition to the so-called Plan (R. 10605, pp. 332, 336, 377, 961, 1238, 1668, 1826, 1827; R. 11174, pp. 11, 12). There was no concert of action among the creditors; although all were creditors of the City, their claims differed in character, some holding only bonds or coupons, while others had judgments or special settlement agreements (R. 10605, pp. 121, 122, 332, 1424, 1425, 1710).

The lower Court confirmed the so-called Plan (R. 10605, p. 1829 to 1834), from which interlocutory decree the petitioners, on behalf of their respective clients, appealed to the Circuit Court of Appeals for the Fifth Circuit. None of the respondents joined in that appeal. The Circuit Court of Appeals reversed the order of the District Court and directed dismissal of the proceedings. *Wright v. City of Coral Gables,* 137 Fed. 2d. 192.

On application of the City of Coral Gables, this Court granted certiorari. *City of Coral Gables v. Wright,* 320 U. S. 729. Upon consideration of the case, the decision of the Circuit Court of Appeals was affirmed by an evenly divided Court. *City of Coral Gables v. Wright,* 321 U. S. 753. Thereafter a petition for rehearing was denied. *City of Coral Gables v. Wright,* 322 U. S. 768. None of the respondents appeared in the proceedings in this Court, except that counsel for the respondents Fiduciary Counsel, Inc., and Augustus T. Ashton filed a brief as amicus curiae.

After the mandate on reversal was filed in the District Court (R. 11174, pp. 13-15), these petitioners filed a petition in the District Court (R. 11174, pp. 21-34) seeking an allowance of attorney fees which they asked the Court to require these respondents to pay. The petition alleges that the respondents constituted a "class," and had been benefited by the appeal which had been successfully prosecuted for Ed C. Wright by the petitioner Walton.* It is conceded in petitioners' statement (page 3 of the petition), that the appeal was taken by petitioners in the names of their respective clients only, and no disclosure was made of any claim that petitioners were acting on behalf of a "class," or for the benefit of anyone other than their own

*The appeal of petitioner Berry's client, American National Bank of Nashville, was not successful—see *Wright v. City of Coral Gables,* 137 Fed. 2d. 192, headnote 1, and opinion pp. 194 to 195.

respective clients, prior to the filing of the petition referred to. The petition further alleged that the respondents had accepted the benefits of the successful appeal.

Objections to the petition, and a motion to strike were filed by this respondent (R. 11174, pp. 38 to 42). Similar motions were also filed by the City of Coral Gables (R. 11174, pp. 35 to 37) and by respondents Fiduciary Counsel, Inc., and Ashton (R. 11174, pp. 16 to 21). In addition to other objectonis which are discussed infra, it was pointed out that the petition failed to disclose what agreement had been made by petitioners with their respective clients as to payment of fees, or what if any fees had been paid them.

Petitioners then asked leave to file an amendment to their petition (R. 11174, pp. 45 to 48), in which, while still failing to disclose how much they had been paid, they alleged that Ed C. Wright (whose contract with American National Bank, they say, required him to pay the Bank's counsel fees) had paid petitioners an undisclosed sum, which they claimed was less than a reasonable fee, whereupon they released Wright, and agreed with him that they would endeavor to collect the remainder of what they claimed was a reasonable fee from these respondents.

The District Court denied the petition (R. 11174, p. 50), upon two grounds, *first* that the facts alleged did not entitle the petitioners to the relief asked, and *second* that the Court was without jurisdiction or authority to grant such relief.

The petitioners were also denied leave to file the proffered amendment, on the ground that it would in no wise strengthen the petition (R. 11174, p. 49).

It should also be noted that the District Court entered its order on the mandate finally dismissing the composition

proceedings and taxing costs (R. 11174, pp. 43 to 44), without retaining jurisdiction for any purpose, before the entry of the orders which petitioners now seek to review.

On appeal to the Circuit Court of Appeals, the orders of the District Court denying the petition for fees and refusing permission to file the amendment were affirmed (*Berry v. Root*, 148 Fed. 2d. 945; R. 11174, pp. 63-68), and a petition for rehearing was denied (R. 11174, p. 80).

A considerable part of the petition and brief of the petitioners is devoted to an analysis of the opinion of the Circuit Court of Appeals, and to an endeavor to show that the opinion of that Court was erroneous. While respondents maintain that the petitioners are mistaken, and that the Circuit Court of Appeals was right, we respectfully submit that it matters not at all whether the opinion of the Circuit Court of Appeals was in all respects, or indeed in any respects, right or wrong. This Court does not grant certiorari to review an opinion.

Furthermore, certiorari should not be granted here because it is clear that, even had the Circuit Court of Appeals reached a wrong conclusion, this is not a case for certiorari, since it is not of the character defined in Rule 38-5 (b).

Questions Presented

At pages 9 to 10 of the petition the petitioners have framed four questions which they allege are presented by this case. We submit that this record raises none of the questions so framed. This is not a case of "benefits" conferred on any "class of creditors"; Bankruptcy Courts have no "historic jurisdiction in equity"; we are not here concerned with "equitable costs"; and there is no issue as to the necessity of an application by the petitioners' clients.

The true question here is merely this:

(1) Is any public interest here involved?

If that could be answered in the affirmative (and it cannot), then these two questions would arise, viz:

(a) Did the Bankruptcy Court have power to grant the petition?

(b) If it had the power, did it abuse its discretion in denying the petition?

To answer this last question, this Court would have to apply certain well established principles, not disputed in the lower Courts, to the facts of this case, in order to determine whether the District Court abused its discretion in holding that the facts did not entitle petitioners to equitable relief. This at once demonstrates that the present case is not of the character which calls for the intervention of this Court.

ARGUMENT

Point 1. No question of public interest is involved.

The question whether a given state of facts will entitle a litigant to equitable relief is ordinarily a question which concerns only the parties to that litigation and does not involve any public interest.

So it is here. The District Court held, upon the facts alleged in the petition, that those facts were not such as to entitle the petitioners to an award of attorney fees as against these respondents.

Even if petitioners were right in their argument that the Bankruptcy Court has any general power as a court of equity to allow attorney fees as "costs as between solicitor and client" (and we show in Point 4, infra, that they are not), the ruling of the District Court that the facts do not entitle petitioners to the relief asked was an exercise of that Court's discretion, in applying the established equitable principles (including arguendo those for which the petitioners contend) to the facts of this case, and the resulting decision was therefore of a character outside the class of which this Court will take jurisdiction by certiorari.

Petitioners have cited, at page 9 of the petition, a number of cases in support of their claim that this case is of a character such that certiorari should be granted. Of the cases cited, those which are relevant (and several are not) are all cases involving important questions of substantive law or procedure, the determination of which would establish vital precedents or otherwise materially affect the public interest.

In the instant case, the petitioners, defeated in the lower Courts, are merely seeking another hearing here. This Court has not made a practice of using its power to bring up cases by certiorari for any such purpose. *Magnum Import Co. v. Coty*, 262 U. S. 159, 163.

Point 2. No conflict between Courts of Appeal is involved.

The petitioners urge that the decision of the Circuit Court of Appeals for the Fifth Circuit is in conflict with decisions in the Second, Third, Fourth, Seventh and Eighth Circuits cited at page 11 of the petition and briefly reviewed below.

No such conflict exists.

In the Second Circuit it was held, in *In Re Lacov*, 142 Fed. 960, that the Bankruptcy Court has power to protect the assets under administration by assessing against a party guilty of baseless and vexatious litigation, the counsel fees of the other parties. This is a power of a wholly different character from the fancied power to award fees for benefits conferred which these petitioners seek to ascribe to the Bankruptcy Court. Since the question involved was entirely different from that in the case at bar, there is no conflict.

In the Third Circuit, it was held, in *In Re Keystone Realty Co.*, 117 Fed. 2d. 1003, that authority is expressly granted to the Bankruptcy Court by Sec. 658, Tit. 11, U. S. C. A., to allow a fee to an attorney for services in a prior equity receivership. Incidentally, the District Court was reversed because it was not shown to be equitable to grant the allowance under the circumstances. The questions involved are quite dissimilar, so there can be no conflict.

In the Fourth Circuit, the decision in *Receivers v. Staake*, 133 Fed. 717, also involved an allowance of fees for services in prior proceedings which might well have been regarded as constituting an equitable charge on assets coming into the hands of the Trustee in Bankruptcy. This also involves no conflict with the case at bar.

In the Seventh Circuit the case of *In Re Swartz*, 130 Fed. 2d. 229, involves an allowance of counsel fees by way of penalization, along lines similar to those in *In Re Lacov*, supra., so that no conflict with that Circuit is indicated.

In the Eighth Circuit, *Summers v. Abbott*, 122 Fed. 36, is a case involving questions similar to those in *Receivers*

v. Staake, supra., which indicates no conflict with that Circuit.

It will thus be seen that the alleged conflict between Circuits which the petitioners urge is wholly non-existent.

The fancied conflict between the decision in question and the earlier Fifth Circuit case of *Beach v. Macon Grocery Co.*, 125 Fed. 513, is also non-existent. That case, like *In Re Lacov* supra., and *In Re Swartz*, supra., involved allowance of fees as penalization for vexatious litigation.

In point of fact, the decision in the case at bar is clearly in line with the following decisions in other Circuits which involve similar questions*, viz: *In Re Nine North Church St.* (2 Cir.), 89 Fed. 2d. 13; *Sartorius v. Bardo* (2 Cir.), 95 Fed. 2d. 387; *In Re Forty-One Thirty-Six Wilcox Bldg. Corp.* (7 Cir.), 100 Fed. 2d. 588; *Oakland Hotel Co. v. Crocker First Natl. Bank* (9 Cir.), 85 Fed. 2d. 959.

So far from being out of line with earlier decisions of the same Circuit, the case is very nearly on all fours with *Lea v. Paterson Sav. Inst.* (5 Cir.), 142 Fed. 2d. 932.

Point 3. This Court will not review the District Court's ruling that the facts alleged did not entitle the petitioners to the relief sought.

It should be quite clear from the face of the record that there is ample support for the decision of the District Court, in the exercise of its proper judicial discretion, that

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*These cases were decided under Section 77B as it existed before the effective date of Section 646. The provisions respecting corporate reorganizations as then existing included no express authority for allowances in case of dismissal of such proceedings. Chapter IX still includes no such authority.

the facts alleged in the petition did not entitle the petitioners to the relief sought.

The alleged benefit to the respondents of the legal services rendered by petitioners was clearly an afterthought of the petitioners which did not occur to them until after they found their own clients unwilling to pay them as much money as they thought they should have.

The appeal was taken by Ed C. Wright for his own benefit solely, and obviously without any regard to the benefits which might incidentally accrue to the respondents. Any benefits which did result were merely incidental. *Linen Thread Co. v. A. Booth & Co.*, 192 Fed. 515; *Davis v. Seneca Falls Mfg. Co.*, 17 Fed. 2d. 546; *Huff v. Bidwell*, 195 Fed. 430; *Tull v. Nash*, 141 Fed. 557; *Standard Lumber Co. v. Interstate Trust Co.*, 82 Fed. 2d. 346; *Lamar v. Hall*, 129 Fed. 79; *Lea v. Paterson Sav. Inst.*, supra.

This respondent was represented throughout the main proceedings by his own counsel. In such case it is well settled that a party so represented is required to pay only his own counsel and is not liable for the fees of any other attorney whose services may have been of incidental benefit. *Nolte v. Hudson Nav. Co.*, 47 Fed. 2d. 166; *Fletcher v. Coomes*, 52 App. D. C. 159, 285 Fed. 893; *Wilson v. Kelley*, 30 S. C. 483, 9 S. E. 523; *Howard v. Carmichael*, 237 Ky. 462, 35 S. W. 2d. 852; *Huff v. Bidwell*, supra; *Tull v. Nash*, supra; *Lea v. Paterson Sav. Inst.*, supra.

This proceeding had none of the elements of a class action, so that it is not governed by the principles which are established in the cases relied on by petitioner, in which the implied agreement of other parties to be responsible for the fees of the attorney conducting the suit for the

benefit of the class is spelled out of the acceptance of the benefits. In the instant case, the benefits were incidental only, and no significant affirmative step such as that required in *Wallace v. Fiske*, 80 Fed. 2d. 897, was required of these respondents to obtain the alleged benefits; hence no agreement to be responsible for petitioners' fees can be implied as against these respondents.

Arguing from the converse, petitioners seek to establish the class representation by alleged analogy with the situation in *Young v. Higbee Co.*, 324 U. S. 204. The stockholders there, being the holders of one class of stock in a corporate reorganization, were necessarily bound together by a community of interest, and so were held by this Court in that case to constitute a class, whereas in the case at bar the judgment creditors and bondholders of the City had no such community of interest. Without stressing that point, however, we observe that, in the cited case, the appealing stockholders, who obtained an identifiable sum of money by selling out the non-appealing stockholders, were required to account for the proceeds of the sale of property rights which did not justly belong to them. The fact that such an obligation was held to exist sheds no light on any question regarding the obligation of one party in litigation to pay the fees of another party's attorney. Logically, there is no connection whatever. The cited case does not involve any question even remotely connected with the questions in the case at bar. One may be held to the exercise of good faith in dealing with matters which affect another's interest, without thereby obligating the other to pay counsel fees. The cited case has no bearing here.

One significant point seems to have escaped the petitioners entirely. The fact that petitioners have never disclosed how much they have been paid, coupled with the

circumstances of their settlement with Ed C. Wright, may well have influenced the District Judge in holding that the facts did not "entitle petitioners to the relief asked upon equitable principles." This point was clearly of weight with the Circuit Court of Appeals, as evidenced by the statement (R. 11174 p. 67) that "These attorneys by releasing their client who employed and primarily owes them certainly do not strengthen their claim against others who did not employ them."

Petitioners have criticized the further statement in that opinion that "according to the better rule the attorney ought not to proceed for the contribution in his own name, but in the name and right of his client," and protest that this contravenes the principle announced in *Central R. Co. v. Pettus*, 113 U. S. 116. Even if they were right in this criticism, the presence of such a statement in the opinion would furnish no ground for the intervention of this Court. But the petitioners are wrong. The Circuit Court of Appeals was not so much concerned with defining a rule, whether contravening or following the rule of *Central R. Co. v. Pettus*. What that Court was stressing was the inequity of petitioners' position. Petitioners have not disclosed to the Court how much they have been paid; they have released their own client upon receipt of a sum which they claim is inadequate; and they have arranged with him that he may shift part of the burden of his obligation for the payment of the fees of his counsel onto these respondents, who were represented in these proceedings by their own attorneys and never accepted representation by the petitioners. This does not indicate a situation in which a Court would incline to use its powers of equity, if it had them, to assist these petitioners in a claim so plainly inequitable.

When all the principles of class suits have been considered and the precedents in equity which are relied on by petitioners, such as *Trustees v. Greenough*, 105 U. S. 527 and *Sprague v. Ticonic Natl. Bank*, 307 U. S. 161, have all been reviewed, it must be conceded that in the exercise of the power of a court of equity (where such power does exist) to award counsel fees for benefits conferred, the Chancellor must be satisfied with the justice and equity of the claimed award. It is plain that the District Judge was not so satisfied, and that he was affirmed in this by the Circuit Court of Appeals. This conclusion is not of a character which this Court will review, and in any event it is plain on the face of the record that there is ample support for the decision in this regard.

Point 4. The decision that the Bankruptcy Court had no power to grant the relief sought is in full accord with established precedents in this Court and in the Circuit Courts of Appeal.

Ignoring the numerous decisions which hold that the power of the Bankruptcy Court to allow counsel fees is strictly limited, petitioners have sought to ascribe to it all the broad powers of the equity courts, and thus to argue that the decision of which they seek review is in direct conflict with the principles of *Trustees v. Greenough*, supra, and other equity cases mentioned at page 10 of their petition and pages 14 to 15 of their brief.

There is no basis for this argument.

It is of course true that this Court has held, as in *Young v. Higbee Co.*, supra, and *American United Life Ins. Co. v. Avon Park*, 311 U. S. 143, cited by petitioners, that, within the limits fixed by the Bankruptcy Act, the Bank-

ruptcy Court can and must apply equitable principles, and has ample power to carry out its authorized functions within those limits. It is equally true, however, that, as this Court has also held, the Bankruptcy Court is limited in the exercise of those powers to the authority expressly granted by the Bankruptcy Act. *Callaghan v. Reconstruction Finance Corp.*, 297 U. S. 464; *Securities & Exch. Com. v. United States Realty & Imp. Co.*, 310 U. S. 434; *Taubel-Scott-Kitzmiller Co. v. Fox*, 264 U. S. 426. The Circuit Courts of Appeal have repeatedly held that the Bankruptcy Court has no powers except those expressly granted by statute and that it has none of the broad powers of a court of equity. *In Re Prima Co.* (7 Cir.), 98 Fed. 2d. 952, cert. den., *Keig v. Harris Trust & Sav. Bank*, 305 U. S. 658; *Chicago Bank of Commerce v. Carter* (8 Cir.) 61 Fed. 2d. 986; *In Re Judith Gap Commercial Co.* (9 Cir.), 5 Fed. 2d. 307. Moreover, this Court has ruled, in *Realty Asso. Sec. Corp. v. O'Connor*, 295 U. S. 295, and again in *Callaghan v. Reconstruction Finance Corp.*, supra, that the policy of the Act clearly calls for rigid economy in administration, so that the power to allow fees and expenses should not be extended by implication, remarking that one seeking award of compensation "must show clear warrant of authority."

As pointed out by the Circuit Court of Appeals in its opinion in this case (R. 11174, p. 66), the only attorney's fees which the Bankruptcy Court is empowered to allow in a municipal composition under Chapter IX are limited, in Section 403 (b), by careful definition, to fees for services in formulating and securing the adoption of a plan of composition; thus where no plan is finally approved, no fee can be allowed in a proceeding under Chapter IX.

That the petitioners seek an award as against other creditors (the respondents), and not from the City's funds,

is a distinction which benefits their claim not at all. There is no more express authority for award of fees as against creditors, where the proceedings are dismissed without approval of a plan, than there is for an award in such case as against the City.

The policy of the Bankruptcy Act, and especially of Chapters IX and X, not only tends to limit the power to allow counsel fees in general and to circumscribe the exercise of that power, but also tends to discourage claims based on alleged representation of or benefits conferred upon any class of creditors, by attorneys who first call attention to such representation or benefits after their services have been rendered. Sections 609 to 613 require notice to the Court of any claim of class representation, and full disclosure concerning arrangements for employment, before any such services are rendered in a corporate reorganization, as a condition of recognition of such representation. Section 403 (a) includes similar requirements in municipal composition proceedings. If those requirements do not absolutely forbid the Court to recognize the petitioners as representatives of an alleged class, at least they clearly show the policy of the Act to discourage such claims and limit the Court in granting such allowances.

The ruling of the District Court that it had no power to grant the allowances sought was upheld by the Circuit Court of Appeals because no express warrant therefor can be found in the statute, and the powers of the Bankruptcy Court in respect of such allowances cannot be extended by implication. This decision was clearly in line with the decisions of this Court mentioned above under this point 4, and with analogous decisions under Section 77B cited above at page 9 of this brief.

Petitioners argue that, because (they say) the Bankruptcy Court has all the broad and plenary powers of a court of equity, its power to "tax costs and render judgments therefor," which is found in Section 11 (18), Tit. 11 U. S. C. A., may be extended by implication to include a general power to allow attorney's fees "as equitable costs as between solicitor and client." This argument, being based as we have shown on a fallacious assumption as to the powers of the Court, must fail. In any event, the word "costs" as used in the statute would not include "equitable costs as between solicitor and client" because the word "costs" does not include such allowances unless expressly so stated. *Kansas City So. R. Co. v. Guardian Trust Co.*, 281 U. S. 1.

Not a single case is cited by petitioners to support their argument respecting this Section 11 (18). They have cited and reviewed a number of cases in equity which confirm the power of an equity court to allow attorney fees as "costs as between solicitor and client," such as *Trustees v. Greenough*, supra; *Reconstruction Finance Corp. v. J. G. Menihan Corp.*, 312 U. S. 81; *Sprague v. Ticonic Natl. Bank*, supra; *O'Hara v. Oakland County*, 136 Fed. 2d. 152; *Cleveland v. Second Natl. Bank*, 149 Fed. 2d. 466; and *Central R. Co. v. Pettus*, supra; but this power of the equity courts is not disputed here, and these equity cases are not in point.

Petitioners have also cited a number of cases relating to the powers of Bankruptcy Courts, but none support their argument. Several of the cited cases involve allowances under express statutory authority to be found in Title 11 U. S. C. A., such as *Smith v. Central Trust Co.*, 139 Fed. 2d. 733, which upholds an allowance under Section 646; *In Re Keystone Realty Co.*, supra, under Section

658; and various cases dealing with the allowance of fees in prior proceedings, such as *Randolph v. Scruggs*, 109 U. S. 533; *Receivers v. Staake*, supra; *In Re Little River Lumber Co.*, 101 Fed. 558; and *Summers v. Abbott*, supra.

In ordinary bankruptcy, Section 104 expressly permits allowance of certain fees on dismissal, as does also the above cited Section 646 in proceedings under Chapter X. The absence of any parallel provision in Chapter IX is significant. The existence of express authority for allowances in the cases last noted serves to emphasize the absence of any authority in such a situation as that of the petitioners.

Petitioners also cite certain cases in which the Courts have assessed counsel fees of the other parties against one guilty of vexatious litigation or unwarranted interference with the proceedings, which power, as mentioned above, stems from a different source and inheres in the authority of the Bankruptcy Court to protect its own proceedings. Of this class are *In Re Lacov*, supra; *In Re Swartz*, supra; *Beach v. Macon Grocery Co.*, supra.

The older nisi prius cases cited in the footnotes on pages 16, 21 and 22 of petitioners' brief are also not persuasive.

It is well settled, upon the authorities we have cited, that the Bankruptcy Court, has no such equity power to allow counsel fees as the petitioners argue. On the contrary, its power to allow counsel fees is closely limited. By the express provisions of Chapter IX defining the Court's powers in municipal composition proceedings, by the significant absence of other provisions as noted above, and by the policy and purposes of the Bankruptcy Law, it cannot be doubted that the lower Court had no power to grant to the petitioners the award of fees which they sought.

The decision of which the petitioners seek review is not at all out of line with the decisions of this Court and in no respect in conflict with the relevant decisions in the other Circuits. We have shown that petitioners' criticism of the opinion of the Circuit Court of Appeals is without justification, but in any event furnishes no reason why this Court should grant certorari. The lower Court was right in holding that it had no power to grant the relief sought by petitioners, and the Circuit Court of Appeals was right in affirming that decision.

Conclusion

This record presents no questions of the character defined in Rule 38-5. No new question of interpretation or application of Chapter IX of the Bankruptcy Act is involved. The petitioners are merely seeking a third hearing. No reason appears why this Court should intervene.

The application for a writ of certiorari should be denied.

Dated September 12, 1945.

Respectfully submitted,

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